

HOUSE BILL NO. 538

INTRODUCED BY D. VILLA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE HOMEOWNER'S PROTECTION ACT;
5 DEFINING AND REGULATING "HIGH-COST MORTGAGE LOANS"; PROHIBITING FLIPPING OF MORTGAGE
6 LOANS; REGULATING TYPES OF FEES AND DISCOUNT POINTS IN CERTAIN MORTGAGE LOANS;
7 PROHIBITING CERTAIN PRACTICES AMONG LENDERS INTENDED TO ENCOURAGE DEFAULTS OR
8 CERTAIN TYPES OF REFINANCING; REQUIRING NOTICE ON HIGH-COST MORTGAGE LOANS;
9 REGULATING METHODS FOR CURING MORTGAGE LOAN DEFAULTS; EXTENDING THE REGULATION
10 OF HIGH-COST MORTGAGE LOANS TO PURCHASERS OR ASSIGNEES; PROVIDING BORROWERS WITH
11 A PRIVATE RIGHT OF ACTION AND OTHER FORMS OF RELIEF; EXTENDING A GOOD FAITH DEFENSE
12 TO LENDERS; PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH INVESTIGATORY,
13 RULEMAKING, AND ENFORCEMENT AUTHORITY; PROVIDING PENALTIES; AND AUTHORIZING CRIMINAL
14 PROSECUTION UNDER THE DECEPTIVE PRACTICES STATUTE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be cited as the "Homeowner's
19 Protection Act".

20
21 NEW SECTION. **Section 2. Purpose -- liberal construction.** [Sections 1 through 13] are intended to
22 encourage responsible lending and to protect individual homeowners' equity in their homes. [Sections 1 through
23 13] are to be liberally construed to achieve these purposes.

24
25 NEW SECTION. **Section 3. Definitions.** For the purposes of [sections 1 through 13], the following
26 definitions apply:

27 (1) "Affiliate" means any company that controls, is controlled by, or is under common control with another
28 company, as set forth in 12 U.S.C. 1841(k).

29 (2) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the
30 provisions of 12 CFR 226.

1 (3) "Bona fide discount points" means an amount knowingly paid by the borrower for the express purpose
2 of reducing the interest rate applicable to the mortgage loan and that, in fact, does result in a bona fide reduction
3 of the interest rate but only if the undiscounted interest rate for the mortgage loan does not exceed the
4 conventional mortgage rate by 2 percentage points for a mortgage loan secured by a first lien or by 3.5
5 percentage points for a mortgage loan secured by a subordinated lien.

6 (4) "Borrower" means an individual obligated to repay a mortgage loan, including a coborrower, cosigner,
7 or guarantor.

8 (5) "Conventional mortgage rate" means the required net yield for a 90-day standard mandatory delivery
9 commitment for a reasonably comparable loan from either the federal national mortgage association or the federal
10 home loan mortgage corporation, whichever is greater.

11 (6) "Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or
12 charged in a mortgage loan and that is authorized by law other than [sections 1 through 13], but only if the
13 mortgage loan:

14 (a) does not have an annual percentage rate that exceeds the conventional mortgage rate by more than
15 2 percentage points; and

16 (b) does not permit any prepayment fees or penalties that exceed 2% of the amount prepaid.

17 (7) "Department" means the department of administration established in 2-15-1001, acting through its
18 division of banking and financial institutions.

19 (8) "Excluded points and fees" means, in connection with a mortgage loan, up to and including 1% of
20 the total loan amount attributable to bona fide fees paid to a federal or state government agency that insures
21 payment of some portion of a mortgage loan plus an amount not to exceed 2% of the total loan amount
22 attributable to bona fide discount points or a conventional prepayment penalty. The total excluded points and fees
23 in connection with a mortgage loan may not exceed 3% of the total loan amount.

24 (9) (a) "Flipping a mortgage loan" means the action by a lender of making a new mortgage loan to an
25 existing borrower that refinances the borrower's existing mortgage loan when the new loan does not have a
26 reasonable, tangible net benefit to the borrower considering all of the circumstances, including but not limited to
27 the terms of both the new and the refinanced loans, the cost of the new loan, and the borrower's circumstances.

28 (b) For the purposes of this subsection (9), the term "a reasonable, tangible net benefit to the borrower"
29 includes but is not limited to situations in which:

30 (i) the new mortgage loan and the borrower's other monthly debt combine to be less than 50% of the

- 1 borrower's monthly income as verified by tax returns, payroll receipts, or other third-party income verification;
- 2 (ii) the borrower's monthly payment for a new consolidated debt is a minimum of 20% lower than the total
- 3 of all monthly obligations being financed, taking into account costs and fees of consolidating the debt;
- 4 (iii) the borrower receives a reasonable amount of cash in excess of and in relation to the costs and fees
- 5 that are part of the refinancing;
- 6 (iv) the borrower's rate of interest on the loan is reduced by at least 2 percentage points;
- 7 (v) the costs and fees of changing from an adjustable rate loan to a fixed rate loan can be recouped
- 8 within 2 years;
- 9 (vi) the borrower is able to recoup the costs of refinancing the loan within 2 years and reduce the interest
- 10 rate by 2 percentage points or the length of the loan term by a minimum of 5 years.
- 11 (c) (i) The term applies to a refinanced mortgage loan if, in the refinancing of an existing mortgage loan
- 12 that was consummated as a special mortgage, the borrower loses one or more of the benefits of the special
- 13 mortgage.
- 14 (ii) For the purposes of subsection (9)(c)(i), a special mortgage loan:
- 15 (A) originated, was subsidized, or was guaranteed by or through a state, tribal, or local government or
- 16 a nonprofit organization; or
- 17 (B) bears either a below-market interest rate at the time that the mortgage loan was originated or has
- 18 nonstandard payment terms beneficial to the borrower, including payments that vary with income, are limited to
- 19 a percentage of income, or are not required under specified conditions.
- 20 (10) "High-cost mortgage loan" means a mortgage loan in which the terms of the loan meet or exceed
- 21 one or more thresholds.
- 22 (11) "Lender" means the secured creditor named in the debt obligation and document creating the lien.
- 23 The term includes but is not limited to a mortgage broker or a mortgage banker, as those terms are defined in
- 24 32-9-103.
- 25 (12) "Mortgage broker" has the meaning provided in 32-9-103.
- 26 (13) "Mortgage loan" means an extension of credit, including an open-end credit plan:
- 27 (a) that is made primarily for personal, family, or household use and is primarily secured by either a
- 28 mortgage or a trust indenture on residential real estate located in this state; and
- 29 (b) that is considered a federally related mortgage loan as set forth in 24 CFR 3500.2.
- 30 (14) "Person" means an individual, partnership, corporation, association, limited liability company, limited

1 liability partnership, or other entity.

2 (15) (a) "Points and fees" means:

3 (i) all items included in the definition of finance charge in 12 CFR 226.4(a) and 226.4(b), except interest
4 or the time price differential;

5 (ii) all items described in 12 CFR 226.32(b)(1)(iii);

6 (iii) all compensation paid directly or indirectly to a mortgage broker from any source, including a
7 mortgage broker that originates a loan in its own name in a table-funded transaction;

8 (iv) the cost of all premiums paid directly or indirectly for any credit life, credit disability, credit
9 unemployment, or credit property insurance or any other life or health insurance or of any payments financed by
10 the lender directly or indirectly for any debt cancellation or suspension agreement or contract, except that
11 insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis may
12 not be considered financed by the lender;

13 (v) maximum prepayment fees and penalties that may be charged or collected under the terms of the
14 loan documents; and

15 (vi) all prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous
16 loan originated or currently held by the same lender or an affiliate of the lender.

17 (b) For open-end loans, points and fees are calculated by adding the total points and fees known at or
18 before closing, including the maximum prepayment penalties that may be charged or collected under the terms
19 of the loan documents, plus the minimum additional fees that the borrower would be required to pay to draw down
20 an amount equal to the total credit line.

21 (16) "Table-funded transaction" means a closing of a mortgage loan in which a mortgage broker is named
22 as the lender on the mortgage loan note and then sells the note within 3 business days of closing to another
23 party.

24 (17) "Threshold" has the meaning in subsection (17)(a) or (17)(b), whichever is applicable:

25 (a) "Rate threshold", for a mortgage loan, means the annual percentage rate that equals or exceeds the
26 rate set forth in 12 CFR 226.32(a)(1)(i), without regard to whether the mortgage loan may be considered a
27 residential mortgage transaction or an extension of open-end credit as those terms are defined in 12 CFR 226.2.

28 (b) "Total points and fees threshold" means for loans in which the total loan amount is:

29 (i) \$20,000 or more, the total points and fees payable in connection with the mortgage loan less any
30 excluded points and fees that exceed 5% of the total loan amount; or

1 (ii) less than \$20,000, the total points and fees payable in connection with the mortgage loan less any
2 excluded points and fees that exceed the lesser of \$1,000 or 8% of the total loan amount.

3 (18) "Total loan amount" means the principal of the loan minus excluded points and fees that are included
4 in the principal amount of the loan. For open-end loans, the total amount must be calculated using the total line
5 of credit allowed under the mortgage loan at closing.

6 (19) "Yield spread premium" means the amount paid to a mortgage broker by a lender based on the
7 difference between the interest rate at which the mortgage broker originates the loan and the par or market rate
8 offered by the lender.

9

10 **NEW SECTION. Section 4. Disclosures -- good faith estimates.** (1) (a) At the time of application for
11 a mortgage loan, a lender shall provide the borrower with a disclosure identifying the department as the agency
12 designated to receive complaints or inquiries about the origination and making of the loan.

13 (b) The disclosure must include the department's telephone number and address.

14 (c) To acknowledge receipt of the disclosure, a borrower shall sign a copy of the document, and the
15 signed document must be maintained in the borrower's file.

16 (2) (a) At the time that the borrower receives the initial good faith estimate under the federal Real Estate
17 Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and at least 24 hours before the scheduled closing
18 of a mortgage loan, the lender shall disclose in writing the amount being earned on the loan.

19 (b) The good faith estimate must include:

20 (i) the dollar amount of any yield spread premium and the percentage of the yield spread premium in
21 relation to the principal loan amount; and

22 (ii) an itemization of dollar amounts for points, fees, and commissions.

23 (3) A document containing the good faith estimate must include a signature and date line. To
24 acknowledge that the good faith estimate required under subsection (2)(b) has been received and is understood,
25 the borrower shall sign the document.

26

27 **NEW SECTION. Section 5. Prohibited practices for lenders.** A lender making a mortgage loan may
28 not:

29 (1) finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property
30 insurance or any other life or health insurance or any payments, directly or indirectly, for any debt cancellation

1 or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees
 2 calculated and paid in full on a monthly basis may not be considered financed by the lender;

3 (2) knowingly engage in the unfair practice of flipping a mortgage loan;

4 (3) recommend or encourage default on an existing loan or other debt prior to and in connection with
 5 the closing or planned closing of a mortgage loan that refinances all or any portion of the existing loan or debt;

6 (4) assess a late payment charge unless:

7 (a) the loan documents specifically authorize a late payment charge;

8 (b) the charge is not imposed unless the payment is past due for 10 days or more; and

9 (c) the charge does not exceed 5% of the amount of the late payment. A late payment charge may not
 10 be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from
 11 a payment made on the mortgage loan and that deduction results in a subsequent default on a subsequent
 12 payment, a separate late payment charge may not be imposed for the default. A lender may apply any payment
 13 made to a prior period's payment due even if the result is late payment charges accruing on subsequent
 14 payments due.

15 (5) require a provision in a mortgage loan that permits the lender in its sole discretion to accelerate the
 16 indebtedness of the borrower. This subsection does not prohibit acceleration of the loan in good faith because
 17 of the borrower's failure to abide by the material terms of the loan.

18 (6) charge a borrower a fee for:

19 (a) information about or delivery of a statement of the balance due to pay off a mortgage loan, which
 20 must be provided within 7 business days after the request; or

21 (b) a release upon prepayment; or

22 (7) charge a borrower a prepayment penalty if:

23 (a) the prepayment results solely because of the enforcement of a "due on sale" clause in the mortgage
 24 or deed of trust securing the loan;

25 (b) the loan provided is prepaid by another loan made by the same lender or an affiliate of the lender;

26 or

27 (c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance
 28 policy.

29

30 **NEW SECTION. Section 6. Prohibited practices and limitations for high-cost mortgage loans. (1)**

1 The following prohibited practices, in addition to those provided in [section 5], apply to a high-cost mortgage loan:

2 (a) A lender may not directly or indirectly finance any points or fees.

3 (b) Prepayment fees or penalties may not be included in the loan documents.

4 (c) A lender may not charge a borrower points and fees if the proceeds of the high-cost mortgage loan
5 are used to refinance an existing high-cost mortgage loan held by the same lender or an affiliate of the lender.

6 (d) A scheduled payment may not be more than twice as large as the average of earlier scheduled
7 payments. This subsection (1)(d) does not apply when the payment schedule is adjusted to the seasonal or
8 irregular income of the borrower.

9 (e) Payment terms may not contain a negative amortization provision or provide for the outstanding
10 principal balance or accrued interest to increase at any time over the course of the loan because the regularly
11 scheduled periodic payments do not cover the full amount of the interest due.

12 (f) A loan provision may not increase the interest rate after default. This subsection (1)(f) does not apply
13 to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents
14 if the change in the interest rate is not triggered by a default or an acceleration of indebtedness.

15 (g) A loan may not include terms under which more than two periodic payments required under the loan
16 are consolidated and paid in advance from the loan proceeds provided to the borrower.

17 (h) A lender may not charge a borrower any fees or other charges to modify, renew, extend, or amend
18 a high-cost mortgage loan or to defer any payment due under the terms of a high-cost mortgage loan.

19 (i) The terms of the loan may not contain a choice of law provision identifying a state other than this state,
20 unless otherwise allowed under federal law.

21 (2) The following limitations apply to high-cost mortgage loans:

22 (a) A lender may not extend a high-cost mortgage loan to a borrower unless a reasonable lender would
23 believe at the time that the loan is closed that the borrower residing in the home will be able to make the
24 scheduled payments associated with the loan based on a consideration of the borrower's current and expected
25 income, current obligations, employment status, and other financial resources, other than the borrower's equity
26 in the collateral that secures the repayment of the loan. There is a rebuttable presumption that the borrower
27 residing in the home is able to make the scheduled payments to repay the obligation if, at the time that the loan
28 is consummated, the borrower's total monthly debts, including amounts under the loan, do not exceed 50% of
29 the borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income
30 verification.

1 (b) A lender may not pay a contractor under a home improvement contract from the proceeds of a
2 high-cost mortgage loan, unless:

3 (i) the lender is presented with a signed and dated completion certificate showing that the home
4 improvements have been completed; and

5 (ii) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election
6 of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement
7 signed by the borrower, the lender, and the contractor prior to the disbursement.

8 (c) A high-cost mortgage loan document that creates a debt or pledges property as collateral must
9 contain the following notice on the first page of the document in a conspicuous manner:

10 "NOTICE: This is a high-cost mortgage loan subject to special rules under state law. Purchasers or
11 assignees of this high-cost mortgage loan may be liable for all claims and defenses by the borrowers with respect
12 to the mortgage loan."
13

14 **NEW SECTION. Section 7. Borrower's rights -- notice -- cure of default.** (1) If a lender asserts that
15 grounds exist for acceleration and requires the payment in full of all sums secured by the security instrument, the
16 borrower or anyone authorized to act on the borrower's behalf has the right at any time, up to the time that title
17 is transferred by means of foreclosure by judicial proceeding and sale or otherwise, to cure the default and
18 reinstate the mortgage loan by tendering the amount of performance as specified in this section. Cure of default,
19 as provided in this section, must reinstate the borrower to the same position as if the default had not occurred
20 and must nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or
21 note arising from the default.

22 (2) Before any action filed to foreclose upon the home or other action to seize or transfer ownership of
23 the home, the lender or a person authorized to act on the lender's behalf shall deliver to the borrower a notice
24 of the right to cure the default. The notice must contain the following:

25 (a) the nature of default claimed on the mortgage loan;

26 (b) the borrower's right to cure the default by paying the sum of money required to cure the default;

27 (c) the date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure
28 or other action to seize the home. This date may not be less than 30 days after the date on which the notice is
29 effective.

30 (d) sufficient information to enable the borrower to calculate the amount to cure the total default at any

1 point during the 30-day period if the amount necessary to cure the default will change during the 30-day period
2 after the effective date of the notice because of the application of a daily interest rate or the addition of late fees;

3 (e) the name, address, and phone number of a person to whom the payment or tender must be made;

4 (f) a provision stating that if the borrower does not cure the default by the date specified, the lender may
5 take steps to terminate the borrower's ownership in the property by requiring payment in full of the mortgage loan
6 and beginning a foreclosure proceeding or other action to seize the home; and

7 (g) the name and address of the lender and the phone number of a representative of the lender whom
8 the borrower may contact if the borrower disagrees with the lender's assertion that a default has occurred or the
9 correctness of the lender's calculation of the amount required to cure the default.

10 (3) A partial payment made or tendered in response to the notice described in subsection (2) must be
11 accepted.

12 (4) A borrower seeking to cure a default under this section:

13 (a) may not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure
14 a default as provided for in this section, other than the fees specifically allowed by this section;

15 (b) is not liable for any attorney fees relating to the borrower's default that are incurred by the lender prior
16 to or during the 30-day period set forth in subsection (2). After the lender files a foreclosure action or takes other
17 action to seize or transfer ownership of the home, the borrower is liable only for attorney fees that are reasonable
18 and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours.

19 (5) If a default is cured after the initiation of any action to foreclose, the lender shall take steps necessary
20 to terminate the foreclosure proceedings or other action.

21
22 **NEW SECTION. Section 8. High-cost loan purchasers or assignees.** (1) (a) Except as provided in
23 subsection (1)(b), a person who purchases or is otherwise assigned a high-cost mortgage loan is subject to all
24 affirmative claims and any defenses with respect to the loan that the borrower could assert against the original
25 lender of the loan.

26 (b) Subsection (1) does not apply if the purchaser or assignee of a high-cost mortgage loan
27 demonstrates by a preponderance of the evidence that it:

28 (i) had in place, at the time of the purchase or assignment of the subject loans, policies that expressly
29 prohibit its purchase or acceptance of assignment of any high-cost mortgage loans;

30 (ii) requires by contract that a seller or assignor of mortgage loans represents and warrants to the

1 purchaser or assignee that either:

2 (A) the seller or assignor will not sell or assign any high-cost mortgage loans to the purchaser or
3 assignee; or

4 (B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or
5 assignor that meets the criteria of subsection (1)(b)(ii)(A) or this subsection (1)(b)(ii)(B);

6 (iii) at the time of purchase or assignment of mortgage loans or within a reasonable period of time after
7 the purchase or assignment of the mortgage loan, exercises reasonable due diligence intended by the purchaser
8 or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost
9 mortgage loans. The reasonable due diligence must provide for sampling and does not require loan-by-loan
10 review.

11 (2) A borrower meeting the criteria in subsection (3) and acting only in an individual capacity may assert
12 claims described under subsection (4).

13 (3) A borrower described in subsection (2) is limited to claims that reflect amounts required to reduce
14 or extinguish the borrower's liability under the mortgage loan plus amounts required to recover costs, including
15 reasonable attorney fees.

16 (4) A borrower described in subsection (2) may assert the following claims, which the borrower could
17 assert against a lender of the mortgage loan, against any subsequent holder or assignee of the mortgage loan:

18 (a) within 5 years of the closing of a high-cost mortgage loan, a violation of [sections 1 through 13] in
19 connection with the loan as an original action; and

20 (b) at any time during the term of a high-cost mortgage loan, after an action to collect on the mortgage
21 loan or foreclose on the collateral securing the mortgage loan has been initiated or the debt arising from the
22 mortgage loan has been accelerated or the mortgage loan has become 60 days in default, any defense, claim,
23 or counterclaim or action to enjoin foreclosure or preserve or obtain possession of the home that secures the
24 loan.

25 (5) This section may not be construed to limit the substantive rights, remedies, or procedural rights
26 available to a borrower against any lender, assignee, or holder under any other law. The rights conferred by
27 borrowers under subsections (1) through (4) are independent of each other and do not limit each other.

28
29 **NEW SECTION. Section 9. Right of action -- violations -- penalties -- good faith provisions.** (1)
30 A borrower has a private right of action for violations of [sections 1 through 13].

1 (2) A person found by a preponderance of the evidence to have originated or brokered a mortgage loan
2 that violates a provision of [sections 1 through 13] is liable to the borrower for the following:

3 (a) actual damages, including consequential and incidental damages. The borrower may not be required
4 to demonstrate reliance in order to receive actual damages.

5 (b) statutory damages for violations of [sections 5 and 6] equal to two times the finance charge paid
6 under the loan and forfeiture of the remaining interest under the loan;

7 (c) punitive damages, if the violation involved actual fraud or actual malice; and

8 (d) costs, including reasonable attorney fees.

9 (3) A borrower may be granted injunctive, declaratory, or other equitable relief considered by a court to
10 be appropriate in an action to enforce compliance with [sections 1 through 13].

11 (4) The right of rescission granted under 15 U.S.C. 1601, et seq., for a violation of that law is available
12 to a borrower by recoupment against a party foreclosing on the mortgage loan or collecting on the loan at any
13 time during the term of the loan. [Sections 1 through 13] may not be construed to limit recoupment rights available
14 to the borrower under any other law.

15 (5) The remedies provided by this section are not intended to be exclusive remedies available to a
16 borrower. A borrower may not be required to exhaust any administrative remedies under [sections 1 through 13]
17 or any other applicable law before proceeding under this section.

18 (6) (a) A lender in a mortgage loan who, when acting in good faith, fails to comply with the provisions
19 of [sections 1 through 13] may be considered in compliance with [sections 1 through 13] by complying with the
20 criteria in either subsection (6)(b) or (6)(c).

21 (b) Within 30 days of the loan closing and prior to receiving any notice of compliance failure, the lender
22 shall make appropriate restitution to the borrower and appropriate adjustments to the loan.

23 (c) Within 60 days of the loan closing or upon receipt of any notice of failure to comply with [sections 1
24 through 13], if the compliance failure was not intentional and resulted from a bona fide error notwithstanding the
25 maintenance of procedures reasonably adopted to avoid errors, the lender shall notify the borrower of the
26 compliance failure, make appropriate restitution to the borrower, and make appropriate adjustments to the loan
27 to satisfy the requirements of [sections 1 through 13]. If harm to the borrower cannot be remedied by compliance
28 with the requirements of [sections 1 through 13], the lender shall change the terms of the loan in a manner
29 beneficial to the borrower so that the loan is no longer subject to the provisions of [sections 1 through 13].
30 Examples of a bona fide error include clerical, calculation, computer malfunction, or programming errors and

1 printing errors. An error of legal judgment with respect to a person's obligations pursuant to [sections 1 through
2 13] is not a bona fide error.

3 (7) The remedies provided in [section 7] and this section are cumulative.

4 (8) It is a violation of [sections 1 through 13] for any person in bad faith to avoid application of [sections
5 1 through 13] by dividing any loan transaction into separate parts or structuring a mortgage loan transaction as
6 an open-end loan for the purpose of evading the provisions of [sections 1 through 13] if the loan would have been
7 a high-cost mortgage loan had it been structured as a closed-end loan.

8 (9) It is a violation of [sections 1 through 13] to engage in any subterfuge with the intent of evading any
9 provision of [sections 1 through 13].

10

11 **NEW SECTION. Section 10. Department authority -- rulemaking.** (1) The department may investigate
12 any matter, upon complaint or otherwise, if it appears that a person has engaged or offered to engage in any act
13 or practice that is in violation of any provision of [sections 1 through 13] or any rule adopted or order issued by
14 the department pursuant to [sections 1 through 13].

15 (2) The department may assess the expenses of any investigation or legal procedure undertaken
16 pursuant to this section against the lender or affiliate of the lender that was investigated or against which a legal
17 procedure was undertaken.

18 (3) Fees collected under this section must be deposited into the department's appropriate state special
19 revenue account to be used by the department in administering the provisions of [sections 1 through 13].

20 (4) Information obtained during an investigation may be disclosed to law enforcement officials and other
21 state and federal regulatory agencies for further investigation and enforcement.

22 (5) The department may issue a subpoena to any person who is believed to have information,
23 documentary material, or physical evidence relevant to an alleged or suspected violation of [sections 1 through
24 13].

25 (6) The subpoena may require a person to furnish, under oath or otherwise, a report in writing setting
26 forth the relevant facts and circumstances of which the person has knowledge or to appear and testify or produce
27 relevant documentary material or physical evidence for examination, at a reasonable time and place as may be
28 stated in the subpoena.

29 (7) At any time before the return date specified in the subpoena or within 20 days after the subpoena
30 has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the

1 subpoena, stating good cause, may be filed in the district court of the county in which the person served with the
2 subpoena resides or has a principal place of business or in the district court of Lewis and Clark County.

3 (8) In implementing [sections 1 through 13], the department may:

4 (a) administer an oath or affirmation to any person;

5 (b) conduct hearings in aid of an investigation or inquiry;

6 (c) seek a writ or an order restraining or enjoining, temporarily or permanently, any act or practice
7 violating a provision of [sections 1 through 13];

8 (d) bring a civil action for violations of [sections 1 through 13];

9 (e) prescribe forms;

10 (f) adopt rules;

11 (g) exchange information with federal and state regulatory agencies, the department of justice, and the
12 legislative auditor; and

13 (h) exchange information other than confidential information with the mortgage asset research institute,
14 inc., and other similar organizations.

15 (9) Except when required to share confidential criminal justice information with entities listed in
16 subsection (8)(g), the department shall treat all confidential criminal justice information as confidential unless
17 otherwise required by law.

18

19 **NEW SECTION. Section 11. Cease and desist order -- temporary order.** (1) If the department has
20 reasonable cause to believe that a person is engaged in or about to engage in any act or practice constituting
21 a violation of a provision of [sections 1 through 13] or any rule adopted or order issued by the department
22 pursuant to [sections 1 through 13], the department may issue a proposed cease and desist order by notifying
23 the person by certified mail that:

24 (a) the person to whom the order is addressed has 10 days after receipt of the notice to request a
25 hearing;

26 (b) a temporary order is in place directing the person to cease and desist from continuing the act or
27 practice pending a hearing, if a hearing is requested;

28 (c) the temporary order provided for in subsection (1)(b) remains in effect until 10 days after the hearing
29 examiner issues proposed findings of fact and conclusions of law; or

30 (d) the temporary order becomes final if the person to whom the notice is addressed does not request

1 a hearing as provided in subsection (1)(a).

2 (2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [section
3 13(2)].

4
5 **NEW SECTION. Section 12. Injunctions -- receivers.** (1) If the department has reason to believe that
6 a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections
7 1 through 13] or any rule adopted or order issued by the department pursuant to [sections 1 through 13], the
8 department, upon determining that proceeding would be in the public interest, may bring an action in the name
9 of the state to restrain by preliminary or permanent injunction or temporary restraining order the use of the
10 unlawful method, act, or practice.

11 (2) The notice for an action pursuant to subsection (1) must follow the provisions of 27-19-105,
12 27-19-201, 27-19-301, 27-19-303, or 27-19-314 and must be served at least 20 days before a hearing called in
13 response to the action on which a preliminary or a permanent injunction is sought.

14 (3) A temporary restraining order may be issued without notice under the provisions of 27-19-315
15 through 27-19-319.

16 (4) An action under this section may be brought in the district court in the county in which the recipient
17 of the notice lives or has a principal place of business or in the district court of Lewis and Clark County.

18 (5) A bond may not be required of the department for a preliminary or permanent injunction or a
19 temporary restraining order.

20 (6) A district court may issue a preliminary or permanent injunction or a temporary restraining order to
21 restrain and prevent violations of [sections 1 through 13] and may award reasonable attorney fees and costs to
22 the department.

23 (7) (a) In addition to other means provided by law to enforce a preliminary or permanent injunction or
24 a temporary restraining order, the court in which an action is brought under this section may appoint a receiver
25 as provided in 27-20-102.

26 (b) A receiver, after being qualified pursuant to 27-20-301, has the powers for custody, collection,
27 administration, winding up, and liquidation of the property and business or as much of the property or business
28 as the court considers reasonably necessary to prevent violations of [sections 1 through 13].

29
30 **NEW SECTION. Section 13. Enforcement -- criminal action -- penalties.** (1) The attorney general

1 or a county attorney may bring a criminal action for a violation of [sections 1 through 13] under 45-6-317.

2 (2) A lender who knowingly violates any provision of [sections 1 through 13] is subject to a fine for each
3 violation in an amount not to exceed \$10,000.

4 (3) Fines must be deposited in the state general fund.

5 (4) If the deceptive practices are part of a common scheme, the offender shall be fined an amount not
6 to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both, and the
7 provisions of 45-2-312 apply.

8
9 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12
13 **NEW SECTION. Section 15. Codification instruction.** [Sections 1 through 13] are intended to be
14 codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 13].

15 - END -